



BOARD-ADOPTED POLICIES

POLICY NUMBER: 2.00.250

EFFECTIVE DATE: 1/15/04

TITLE: Public Disclosure

SUPERSEDES: N/A

BOARD ADOPTION: 1/15/04

APPROVED: *Joseph A. Dea*

PURPOSE:

The Washington State Investment Board (WSIB) has a fiduciary duty to invest and manage the funds entrusted to it to maximize returns at a prudent level of risk for the exclusive benefit of the beneficiaries of the funds. The WSIB is required to disclose public records and to liberally construe Washington's Public Disclosure Act (PDA) and narrowly construe exemptions from public disclosure. This policy explains how the WSIB will administer the policies which govern its duties with respect to prudent investment and requests to inspect or copy public records.

POLICY:

The WSIB will operate with transparency to make as much information as possible available to the public. Under the law, certain public records are exempt from public disclosure in order to protect particular privacy or confidentiality interests. Exemptions from public disclosure assist the WSIB in meeting its fiduciary obligations by enabling it to compete successfully in markets where exempt information would be used to the detriment of the funds entrusted to the WSIB or to the provider of the information.

The WSIB will exercise good faith in responding to requests for disclosure of public records. For disclosure purposes, a "public record" is any writing, document or record containing information relating to the conduct or performance of any governmental or proprietary function prepared, owned, used, or retained by the WSIB regardless of physical form or characteristics. The WSIB will disclose every public record which is requested to be disclosed, unless it is exempt from public disclosure. Whenever possible, the WSIB will disclose records in the format in which they exist and are held by the WSIB.

The WSIB will not discriminate between persons requesting records. The WSIB will respond to requests promptly and within five business days of receiving a public disclosure requests if possible. The WSIB may need additional time to respond to a request in order to clarify the intent of the request, to locate and assemble the information requested, to notify third parties or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

Where the law provides for an exemption from public disclosure, the WSIB will protect legitimate privacy or confidentiality interests. The law provides many exemptions from public disclosure, including exemptions applicable to commercial or financial information provided to the WSIB. The WSIB will evaluate, but not be limited to, the applicability of the following exemptions from public disclosure, when presented with a request to inspect or copy public records:

Personal privacy exemption—RCW 42.17.310(1)(b)—applies to disclosure of “[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy”;

Real estate appraisals—RCW 42.17.310(1)(g)—applies to “the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal”;

Valuable formulae exemption—RCW 42.17.310(1)(h)—applies to “[v]aluable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss”;

Preliminary opinion and policy memorandum exemption—RCW 42.17.310(1)(i)—applies to “[p]reliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action”;

Litigation exemption—RCW 42.17.310(1)(j)—applies to “[r]ecords which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior court”;

Applications for public employment—RCW 42.17.310(1)(t)—applies to “[a]ll applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant”;

Financial and commercial information—RCW 42.17.310(1)(aa)—applies to “[f]inancial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information”;

Illustration of financial and commercial information exemption. By way of illustrating this exemption, the WSIB has concluded that disclosing individual fund performance information found in internal investment rate of return reports would not result in a loss to the funds or the beneficiaries of the funds managed by the WSIB. Therefore, the WSIB will make this information readily and consistently available through the WSIB website or in hard copy upon request.

However, for private equity investments, the WSIB has been informed that portfolio company data provided by a partnership or fund in which the WSIB invests would directly impact the value of the portfolio companies in which the partnership or fund invests or seeks to invest, and, ultimately, the investment returns for the state funds and state beneficiaries. Examples include names and values associated with specific companies in which private equity funds invest; sensitive information regarding proprietary technologies, patent secrets, competitive strategies, financing alternatives, company valuation, cash position, management changes, and buyout targets.

Where exempt from public disclosure under the law, the WSIB will seek to protect such confidential commercial or financial information supplied by private equity partnerships or funds in limited partnership agreements, side letters, or other documents or materials provided to the WSIB.

Trade secret exemption—RCW 19.108.010 through .940. Many exemptions from public disclosure are found in the Public Disclosure Act and in other Washington statutes. The Washington Supreme Court has ruled that documents containing trade secrets are exempt from public disclosure and that “[t]he Public Records Act is simply an improper means to acquire knowledge of a trade secret.” Documents containing trade secrets generally include but are not limited to business plans, customer lists and product development information, and are examples of trade secrets which will usually be deemed by providers of the information to the WSIB as exempt from public disclosure. Where the trade secret exemption is deemed by the WSIB to be available, it will notify the provider of the information as set forth below.

Notification to providers of information. The WSIB will make the initial determination whether an exemption from public disclosure applies. However, in some instances, the party best able to raise and defend the application of an exemption deemed by the WSIB to potentially apply will be the party providing the documents or information to the WSIB. Accordingly, the WSIB will promptly notify the provider of information to the WSIB if an exemption might be available as to the documents requested to be disclosed. The WSIB will also notify the provider of the information of the time limitations required under Washington law. The WSIB will allow the provider of the information the opportunity to raise and support the asserted exemptions from public disclosure, and, if necessary, to contest the potential release of the affected records or information. Since notification of the provider of the document or information is allowed under the law, in addition to being required where an agreement or contract with the provider of information has a clause which requires such notification of and opportunity to the provider of such information, the WSIB will make reasonable efforts to provide appropriate, prompt, and timely notification to the provider of the record or information which is the subject of a public disclosure request.

Due Diligence and Other Materials and Open Public Meetings. The WSIB will make available to the public any document or information presented at an open public meeting. In advance of open public meetings, certain documents or information may be provided to the Board by staff, by counsel, by consultants and advisors, or by parties with agreements, contracts, or other affiliations with the Board, which are otherwise subject to exemptions under the PDA.

WSIB staff will identify all confidential documents that are supplied to the Board. The WSIB does not view any inadvertent or unintentional disclosure of any documents or information handled in an open public meeting as any waiver of its ability to rely on an available exemption in response to a public disclosure request.

Documents and information disclosed in executive sessions. The Open Meetings Act (in RCW 42.30.110) allows for protection of certain information if disclosed only in executive session, including but not limited to:

RCW 42.30.110(d)—“[t]o review negotiations on the performance of publicly bid contracts, when public knowledge regarding such consideration would cause a likelihood of increased costs”;

RCW 42.30.110(f)—“[t]o receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge”;

RCW 42.30.110(g)—“[t]o evaluate the qualifications of an applicant for public employment or to review the performance of a public employee”;

RCW 42.30.110(i)—“[t]o discuss...with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussions is likely to result in an adverse legal or financial consequence to the agency” including but not limited to “legal risks of a proposed action or current practice that the agency has identified”; and,

RCW 42.30.110(k)—“[t]o consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information.”

The WSIB will protect executive session documents and information if exempt from public disclosure under the law.